

WAC 246-100-011 Definitions. The following definitions shall apply in the interpretation and enforcement of chapter 246-100 WAC:

(1) "Acquired immunodeficiency syndrome (AIDS)" means illness, disease, or conditions defined and described by the Centers for Disease Control, U.S. Public Health Service, Morbidity and Mortality Weekly Report (MMWR), December 18, 1992, Volume 41, Number RR-17. A copy of this publication is available for review at the department and at each local health department.

(2) "AIDS counseling" means counseling directed toward:

(a) Increasing the individual's understanding of acquired immunodeficiency syndrome; and

(b) Assessing the individual's risk of HIV acquisition and transmission; and

(c) Affecting the individual's behavior in ways to reduce the risk of acquiring and transmitting HIV infection.

(3) "Anonymous HIV testing" means that the name or identity of the individual tested for HIV will not be recorded or linked to the HIV test result. However, once the individual testing positive receives HIV health care or treatment services, reporting of the identity of the individual to the state or local public health officer is required.

(4) "Board" means the Washington state board of health.

~~((4+))~~ (5) "Case" means a person, alive or dead, having been diagnosed to have a particular disease or condition by a health care provider with diagnosis based on clinical or laboratory criteria or both.

~~((4+))~~ (6) "Child day care facility" means an agency regularly providing care for a group of children for less than twenty-four hours a day and subject to licensing under chapter 74.15 RCW.

~~((4+))~~ (7) "Communicable disease" means an illness caused by an infectious agent which can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission via an intermediate host or vector, food, water, or air.

~~((4+))~~ (8) "Confidential HIV testing" means that the name or identity of the individual tested for HIV will be recorded and linked to the HIV test result, and that the name of the individual testing positive for HIV will be reported to the state or local health officer in a private manner.

(9) "Contaminated" or "contamination" means containing or having contact with infectious agents or chemical or radiological materials that pose an immediate threat to present or future public health.

~~((+8+))~~ (10) "Contamination control measures" means the management of persons, animals, goods, and facilities that are contaminated, or suspected to be contaminated, in a manner to avoid human exposure to the contaminant, prevent the contaminant from spreading, and/or effect decontamination.

~~((+9+))~~ (11) "Department" means the Washington state department of health.

~~((+10+))~~ (12) "Detention" or "detainment" means physical restriction of activities of an individual by confinement for the purpose of controlling or preventing a serious and imminent threat to public health and may include physical plant, facilities, equipment, and/or personnel to physically restrict activities of the individual to accomplish such purposes.

~~((+11+))~~ (13) "Disease control measures" means the management of persons, animals, goods, and facilities that are infected with, suspected to be infected with, exposed to, or suspected to be exposed to an infectious agent in a manner to prevent transmission of the infectious agent to humans.

~~((+12+))~~ (14) "Health care facility" means:

(a) Any facility or institution licensed under chapter 18.20 RCW, boarding home, chapter 18.46 RCW, birthing centers, chapter 18.51 RCW, nursing homes, chapter 70.41 RCW, hospitals, or chapter 71.12 RCW, private establishments, clinics, or other settings where one or more health care providers practice; and

(b) In reference to a sexually transmitted disease, other settings as defined in chapter 70.24 RCW.

~~((+13+))~~ (15) "Health care provider" means any person having direct or supervisory responsibility for the delivery of health care who is:

(a) Licensed or certified in this state under Title 18 RCW;
or

(b) Is military personnel providing health care within the state regardless of licensure.

~~((+14+))~~ (16) "HIV testing" means conducting a laboratory test or sequence of tests to detect the human immunodeficiency virus (HIV) or antibodies to HIV performed in accordance with requirements to WAC 246-100-207. To assure that the protection, including but not limited to, pre- and post-test counseling, consent, and confidentiality afforded to HIV testing as described in chapter 246-100 WAC also applies to the enumeration of CD4 + (T4) lymphocyte counts (CD4 + counts) and CD4 + (T4) percents of total lymphocytes (CD4 + percents) when used to diagnose HIV infection, CD4 + counts and CD4 + percents will be presumed HIV testing except when shown by clear and convincing evidence to be for use in the following circumstances:

- (a) Monitoring previously diagnosed infection with HIV;
- (b) Monitoring organ or bone marrow transplants;
- (c) Monitoring chemotherapy;
- (d) Medical research; or

(e) Diagnosis or monitoring of congenital immunodeficiency states or autoimmune states not related to HIV.

The burden of proving the existence of one or more of the circumstances identified in (a) through (e) of this subsection shall be on the person asserting such existence.

~~((15))~~ (17) "Infectious agent" means an organism such as a virus, rickettsia, bacteria, fungus, protozoan, or helminth that is capable of producing infection or infectious disease.

~~((16))~~ (18) "Isolation" means the separation, for the period of communicability or contamination, of infected or contaminated persons or animals from others in such places and under such conditions as to prevent or limit the direct or indirect transmission of the infectious agent or contaminant from those infected or contaminated to those who are susceptible or who may spread the agent or contaminant to others.

~~((17))~~ (19) "Local health department" means the city, town, county, or district agency providing public health services to persons within the area, as provided in chapter 70.05 RCW and chapter 70.08 RCW.

~~((18))~~ (20) "Local health officer" means the individual having been appointed under chapter 70.05 RCW as the health officer for the local health department, or having been appointed under chapter 70.08 RCW as the director of public health of a combined city-county health department, or his or her delegee appointed by the local board of health.

~~((19))~~ (21) "Nosocomial infection" means an infection acquired in a hospital or other health care facility.

~~((20))~~ (22) "Outbreak" means the occurrence of cases of a disease or condition in any area over a given period of time in excess of the expected number of cases.

~~((21))~~ (23) "Post-test counseling" means counseling after the HIV test when results are provided and directed toward:

(a) Increasing the individual's understanding of human immunodeficiency virus (HIV) infection;

(b) Affecting the individual's behavior in ways to reduce the risk of acquiring and transmitting HIV infection;

(c) Encouraging the individual testing positive to notify persons with whom there has been contact capable of spreading HIV;

(d) Assessing emotional impact of HIV test results; and

(e) Appropriate referral for other community support services.

~~((22))~~ (24) "Pretest counseling" means counseling provided prior to HIV testing and aimed at:

(a) Helping an individual to understand:

(i) Ways to reduce the risk of human immunodeficiency virus (HIV) transmission;

(ii) The nature, purpose, and potential ramifications of HIV testing;

(iii) The significance of the results of HIV testing; and
(iv) The dangers of HIV infection; and
(b) Assessing the individual's ability to cope with the results of HIV testing.

~~((+23+))~~ (25) "Principal health care provider" means the attending physician or other health care provider recognized as primarily responsible for diagnosis and treatment of a patient or, in the absence of such, the health care provider initiating diagnostic testing or therapy for a patient.

~~((+24+))~~ (26) "Quarantine" means the limitation of freedom of movement of such well persons or domestic animals as have been exposed to, or are suspected to have been exposed to, an infectious agent, for a period of time not longer than the longest usual incubation period of the infectious agent, in such manner as to prevent effective contact with those not so exposed.

~~((+25+))~~ (27) "School" means a facility for programs of education as defined in RCW 28A.210.070 (preschool and kindergarten through grade twelve).

~~((+26+))~~ (28) "Sexually transmitted disease (STD)" means a bacterial, viral, fungal, or parasitic disease or condition which is usually transmitted through sexual contact, including:

- (a) Acute pelvic inflammatory disease;
- (b) Chancroid;
- (c) Chlamydia trachomatis infection;
- (d) Genital and neonatal herpes simplex;
- (e) Genital human papilloma virus infection;
- (f) Gonorrhea;
- (g) Granuloma inguinale;
- (h) Hepatitis B infection;
- (i) Human immunodeficiency virus infection (HIV) and acquired immunodeficiency syndrome (AIDS);
- (j) Lymphogranuloma venereum;
- (k) Nongonococcal urethritis (NGU); and
- (l) Syphilis.

~~((+27+))~~ (29) "Spouse" means any individual who is the marriage partner of an HIV-infected individual, or who has been the marriage partner of the HIV-infected individual within the ten-year period prior to the diagnosis of HIV-infection, and evidence exists of possible exposure to HIV.

~~((+28+))~~ (30) "State health officer" means the person designated by the secretary of the department to serve as statewide health officer, or, in the absence of such designation, the person having primary responsibility for public health matters in the state.

~~((+29+))~~ (31) "Suspected case" or "suspected to be infected" means the local health officer, in his or her professional judgment, reasonably believes that infection with a particular infectious agent is likely based on signs and

symptoms, laboratory evidence, or contact with an infected individual, animal, or contaminated environment.

~~((30))~~ (32) "Veterinarian" means an individual licensed under provisions of chapter 18.92 RCW, veterinary medicine, surgery, and dentistry and practicing animal health care.

AMENDATORY SECTION (Amending WSR 99-17-077, filed 8/13/99, effective 9/1/99)

WAC 246-100-072 Rules for notification of partners at risk of HIV infection. ~~((1) A health care provider may consult with the local health officer or an authorized representative about an HIV-infected individual.~~

~~(2) Only under the specific circumstances listed below, a principal health care provider shall report the identity of sex or injection equipment-sharing partners, including spouses, of an HIV-infected individual to the local health officer or an authorized representative:~~

~~(a) After being informed of the necessity to notify sex and injection equipment sharing partners, including spouses, and confirm notification to the health care provider, the HIV-infected individual either refuses or is unable to notify partners that partners:~~

~~(i) May have been exposed to and infected with HIV; and~~

~~(ii) Should seek HIV pretest counseling and consider HIV testing; and~~

~~(b) The HIV infected individual neither accepts assistance nor agrees to referral to the local health officer or an authorized representative for assistance in notifying partners.~~

~~(3) Only in the specific circumstances listed below, shall a principal health care provider notify the local health officer or an authorized representative to directly contact the HIV-infected person for the purpose of partner notification:~~

~~(a) The HIV infected person agrees to meet with the local health officer or authorized representative; or~~

~~(b) The principal health care provider provided pretest counseling as described in WAC 246-100-209(1) before the individual was tested; and~~

~~(c) The principal health care provider made efforts, but was unable to meet face to face with the individual to notify the individual of the HIV test result and to provide post test counseling as required in WAC 246-100-209 in order to assure partner notification.))~~ (1) A local health officer or authorized representative shall:

(a) Within seven days of receipt of a report indicative of

a previously unreported case of HIV infection, contact the principal health care provider to determine the best means and the necessity of conducting a partner notification case investigation; and

(b) Contact the HIV-infected person for the purpose of providing assistance in notifying sex or injection equipment-sharing partners, including spouses, that they may have been exposed to and infected with HIV and that they should seek HIV pretest counseling and HIV testing, unless:

(i) The principal health care provider recommends that the state or local health officer not meet with the HIV-infected individual for the purpose of notifying partners, including spouses; or

(ii) The local health officer determines a partner notification case investigation is not necessary;

(c) Provide assistance notifying partners in accordance with the "HIV Partner Counseling and Referral Services--Guidance" as published by the Centers for Disease Control and Prevention, December 1998.

(2) If the local health officer decides to conduct the partner notification case investigation, the principal health care provider:

(a) May provide recommendations to the state or local health officer on the best means of contacting the HIV-infected individual for the purpose of notifying sex or injection equipment-sharing partners, including spouses, that partners may have been exposed to and infected with HIV and that partners should seek HIV pretest counseling and HIV testing; and

(b) Shall inform the HIV-infected person that the local health officer or authorized representative will contact the HIV-infected person for the purpose of providing assistance with the notification of partners.

(3) If the principal health care provider recommends that the state or local health officer not meet with the HIV-infected individual for the purpose of notifying partners, including spouses, the principal health care provider shall:

(a) Inform the HIV-infected individual of the necessity to notify sex and injection equipment-sharing partners, including spouses, that they have been exposed to and may be infected with HIV and should seek HIV testing; and

(b) Provide assistance notifying partners in accordance with the "HIV Partner Counseling and Referral Services--Guidance" as published by the Centers for Disease Control and Prevention, December 1998; and

(c) Inform the local health officer or an authorized representative of the identity of sex or injection equipment-sharing partners known to the provider when the HIV-infected individual either refuses or is unable to notify such partners and confirm notification to the health care provider; and

(d) Upon request of the state or local health officer, report the number of exposed partners, including spouses that have been contacted and offered HIV testing.

(4) A health care provider shall not disclose the identity of an HIV-infected individual or the identity of sex and injection equipment-sharing partners, including spouses, at risk of HIV infection, except as authorized in RCW 70.24.105((7)) or WAC 246-100-072((7, or 246-100-076)).

(5) Local health officers and authorized representatives shall:

(a) ~~((Confirm conditions in subsections (2) and (3) of this section were met prior to initiating partner notification or receiving referral of identity of an HIV infected individual; and~~

~~((b)))~~ Use identifying information, provided according to this section, on HIV-infected individuals only for:

(i) Contacting the HIV-infected individual to provide post-test counseling or to contact sex and injection equipment-sharing partners, including spouses; or

(ii) Carrying out an investigation of conduct endangering the public health or of behaviors presenting an imminent danger to the public health pursuant to RCW 70.24.022 or 70.24.024; and

((+e))) (b) Destroy documentation of referral information established under this subsection, containing identities and identifying information on the HIV-infected individual and at-risk partners of that individual, immediately after notifying partners or within three months of the date information was received, whichever occurs first unless such documentation is being used in an active investigation of conduct endangering the public health or of behaviors presenting an imminent danger to the public health pursuant to RCW 70.24.022 or 70.24.024.

(6) A health care provider may consult with the local health officer or an authorized representative about an HIV-infected individual and the need for notification of partners at any time.

NEW SECTION

WAC 246-100-202 Special diseases--Sexually transmitted diseases--Duties and authorities. (1) Health care providers shall:

(a) Report each case of sexually transmitted disease as required in chapter 246-101 WAC; and

(b) At each medical encounter, when providing treatment for an infectious sexually transmitted disease, provide instruction,

appropriate to each patient regarding:

- (i) Communicability of the disease; and
- (ii) Requirements to refrain from acts that may transmit the disease to another; and

- (c) Ensure completion of a prenatal serologic test for syphilis in each pregnant woman pursuant to RCW 70.24.090 including:

- (i) Submitting a blood sample for syphilis to a laboratory approved to perform prenatal serologic tests for syphilis, as required in RCW 70.24.090, at the time of the first prenatal visit; and

- (ii) Deciding whether or not to omit the serologic test for syphilis if the test was performed elsewhere during the current pregnancy; and

- (d) When diagnosing or caring for a patient with gonococcal or chlamydial ophthalmia neonatorum, reporting the case to the local health officer or local health department in accordance with the provisions of chapter 246-101 WAC; and

- (e) When attending or assisting in the birth of any infant or caring for an infant after birth, ensure instillation of a department-approved prophylactic ophthalmic agent into the conjunctival sacs of the infant within the time frame established by the department in policy statement of ophthalmia agents approved for the prevention of ophthalmia neonatorum in the newborn, issued June 19, 1981.

(2) Laboratories, health care providers, and other persons shall deny issuance of a certificate or statement implying an individual is free from sexually transmitted disease.

(3) State and local health officers or their authorized representatives shall have authority to conduct or cause to be conducted an interview and investigation of persons infected or reasonably believed to be infected with a sexually transmitted disease.

- (a) For the purpose of this section, "reasonable belief" and "reasonably believed" shall mean a health officer's belief based upon a credible report from an identifiable individual indicating another person is likely to have a sexually transmitted disease (STD) or to have been exposed to a STD;

- (b) Investigations shall be conducted using procedures and measures described in WAC 246-100-036(4).

(4) Local health officers, health care providers, and others shall comply with the provisions in chapter 70.24 RCW, in addition to requirements in chapters 246-100 and 246-101 WAC.

(5) Any person who violates a rule adopted by the board for the control and treatment of a sexually transmitted disease is subject to penalty under RCW 70.24.080.

NEW SECTION

WAC 246-100-203 Special diseases--Sexually transmitted diseases--Health officer orders. (1) A state or local health officer within his or her jurisdiction may, in accordance with RCW 70.24.024, issue orders for medical examination, testing, and/or counseling, as well as orders to cease and desist specific activities, when he or she knows or has reason to believe that a person has a sexually transmitted disease and is engaging in conduct endangering the public health.

(a) For purposes of this section, "reason to believe" means a health officer's belief that is based on:

(i) Laboratory test results confirming or suggestive of a STD; or

(ii) A health care provider's direct observation of clinical signs confirming an individual has or is likely to have a STD; or

(iii) Information obtained directly from an individual infected with a STD about the identity of his or her sexual or needle-sharing contacts when:

(A) Contact with the infected individual occurred during a period when the disease may have been infectious; and

(B) The contact was sufficient to transmit the disease; and

(C) The infected individual is, in the health officer's judgment, credible and believable.

(b) "Conduct endangering the public health" for the purposes of RCW 70.24.024 and this section, means:

(i) Anal, oral, or vaginal intercourse for all sexually transmitted diseases;

(ii) For HIV and Hepatitis B:

(A) Anal, oral, or vaginal intercourse; and/or

(B) Sharing of injection equipment; and/or

(C) Donating or selling blood, blood products, body tissues, or semen; and

(iii) Activities described in (b)(i) and (ii) of this subsection resulting in introduction of blood, semen, and/or vaginal fluids to:

(A) Mucous membranes;

(B) Eyes;

(C) Open cuts, wounds, lesions; or

(D) Interruption of epidermis.

(c) State and local health officers and their authorized representatives shall have authority to issue written orders for medical examination, testing, and/or counseling under chapter

70.24 RCW, only after:

(i) All other efforts to protect public health have failed, including reasonable efforts to obtain the voluntary cooperation of the person to be affected by the order; and

(ii) They have sufficient evidence to "reasonably believe" the individual to be affected by the order:

(A) Has a sexually transmitted disease; and

(B) Is engaging in "conduct endangering public health"; and

(iii) They have investigated and confirmed the existence of "conduct endangering the public health" by:

(A) Interviewing sources to assess their credibility and accuracy; and

(B) Interviewing the person to be affected by the order; and

(iv) They have incorporated all information required in RCW 70.24.024 in a written order.

(d) State and local health officers and their authorized representatives shall have authority to issue written orders for treatment under RCW 70.24.022 only after laboratory test results or direct observation of clinical signs or assessment of clinical data by a physician confirm the individual has, or is likely to have, a sexually transmitted disease.

(e) State and local health officers and their authorized representatives shall have authority to issue written orders to cease and desist from specified activities under RCW 70.24.024 only after:

(i) They have determined the person to be affected by the order is engaging in "conduct endangering public health"; and

(ii) Laboratory test results, or direct observation of clinical signs or assessment of clinical data by a physician, confirm the individual has, or is likely to have, a sexually transmitted disease; and

(iii) They have exhausted procedures described in subsection (8)(a) of this section; and

(iv) They have enlisted, if appropriate, court enforcement of the orders described in subsection (8)(a) and (b) of this section.

(f) Written orders to cease and desist from specified activities shall be for an initial period of time not to exceed three months, and may be renewed by the health officer for periods of time not to exceed three months provided all requirements of RCW 70.24.024 regarding notification, confidentiality, right to a judicial hearing, and right to counsel are met again at the time of renewal.

(2) A state or local health officer within his or her jurisdiction may, in accordance with RCW 70.24.034, bring action in superior court to detain the person in a designated or approved facility when he or she knows or has reason to believe that person has a sexually transmitted disease and continues to

engage in behaviors that present an imminent danger to the public health.

(a) "Behaviors that present an imminent danger to public health" or "BPID" for the purposes of detention in accordance with RCW 70.24.034 and this section means the following activities, under conditions specified below, performed by an individual with a laboratory-confirmed HIV infection:

- (i) Anal or vaginal intercourse without a latex condom; or
- (ii) Shared use of blood-contaminated injection equipment;
- (iii) Donating or selling HIV-infected blood, blood products, or semen; and

(iv) Activities described in (a)(i) and (ii) of this subsection constitute BPID only if:

(A) The infected individual received post-test counseling as described in WAC 246-100-209 prior to repeating activities; and

(B) The infected individual did not inform the persons with whom the activities occurred of his or her infectious status.

(b) State and local health officers and their authorized representatives shall have authority to seek court orders for detainment under RCW 70.24.034 only for persons infected with HIV and only after:

- (i) Exhausting procedures described in subsection (1) of this section; and

- (ii) Enlisting, if appropriate, court enforcement of orders to cease and desist; and

- (iii) Having sufficient evidence to "reasonably believe" the person is engaging in BPID.

(c) A local health officer may notify the state health officer if he or she determines:

- (i) The criteria for BPID are met by an individual; and

- (ii) Such individual fails to comply with a cease and desist order affirmed or issued by a court.

(d) A local or state health officer may request the prosecuting attorney to file an action in superior court to detain an individual specified in subsection (9)(a) of this section. The requesting local or state health officer or authorized representative shall:

- (i) Notify the department prior to recommending the detainment setting where the individualized counseling and education plan may be carried out consistent with subsection (9)(d), (e), and (f) of this section;

- (ii) Make a recommendation to the court for placement of such individual consistent with subsection (9)(d) and (f) of this section; and

- (iii) Provide to the court an individualized plan for education and counseling consistent with (f) of this subsection.

(e) State board of health requirements for detainment of individuals demonstrating BPID include:

(i) Sufficient number of staff, caregivers, and/or family members to:

(A) Provide round-the-clock supervision, safety of detainee, and security; and

(B) Limit and restrict activities to prevent BPID; and

(C) Make available any medical, psychological, or nursing care when needed; and

(D) Provide access to AIDS education and counseling; and

(E) Immediately notify the local or state health officer of unauthorized absence or elopement; and

(ii) Sufficient equipment and facilities to provide:

(A) Meals and nourishment to meet nutritional needs; and

(B) A sanitary toilet and lavatory; and

(C) A bathing facility; and

(D) Bed and clean bedding appropriate to size of detainee; and

(E) A safe detention setting appropriate to chronological and developmental age of detainee; and

(F) A private sleeping room; and

(G) Prevention of sexual exploitation;

(iii) Sufficient access to services and programs directed toward cessation of BPID and providing:

(A) Linguistically, socially, culturally, and developmentally appropriate ongoing AIDS education and counseling; and

(B) Psychological and psychiatric evaluation and counseling; and

(C) Implementation of court-ordered plan for individualized counseling and education consistent with (g) of this subsection;

(iv) If required, provide access to isolation and/or restraint in accordance with restraint and seclusion rules in WAC 275-55-263 (2)(c);

(v) Maintain a safe, secure environment free from harassment, physical danger, and sexual exploitation.

(f) Washington state board of health standards for an individualized counseling and education plan for a detainee:

(i) Consideration of detainee's personal and environmental characteristics, culture, social group, developmental age, and language;

(ii) Identification of habitual and addictive behavior and relapse pattern;

(iii) Identification of unique risk factors and possible cross-addiction leading to behavior presenting imminent danger to public health;

(iv) Identification of obstacles to behavior change and determination of specific objectives for desired behavior;

(v) Provision of information about acquisition and transmission of HIV infection;

(vi) Teaching and training of individual coping skills to

prevent relapse to BPID;

(vii) Specific counseling for chemical dependency, if required;

(viii) Identification of and assistance with access to community resources, including social services and self-help groups appropriate to provide ongoing support and maintenance of behavior change; and

(ix) Designation of a person primarily responsible for counseling and/or education who:

(A) Completed pretest and post-test counselor training approved by the office on AIDS; and

(B) Received training, as approved by the office on AIDS, focused on facilitating behavior change related to preventing BPID; and

(C) Has a postgraduate degree in social work, psychology, counseling, psychosocial nursing, or other allied profession; and

(D) Completed at least one year clinical experience after postgraduate education with a primary focus on individualized behavior change; and

(E) Is a certified counselor under chapter 18.19 RCW;

(x) Designation and provision of a qualified counselor under WAC 275-19-145 when the detainee is assessed to have a drug or alcohol problem.

(g) The state board of health designates the following settings appropriate for detainment provided a setting meets requirements in (d)(i), (ii), (iii), (iv), and (v) of this subsection:

(i) Homes, care facilities, or treatment institutions operated or contracted by the department;

(ii) Private homes, as recommended by the local or state health officer;

(iii) Boarding homes licensed under chapter 18.20 RCW;

(iv) Nursing homes licensed under chapter 18.51 RCW;

(v) Facilities licensed under chapter 71.12 RCW, including:

(A) Psychiatric hospitals, per chapter 246-322 WAC;

(B) Alcoholism treatment centers if certified for substance use under chapter 275-19 WAC;

(C) Adult residential rehabilitation centers, per chapter 246-325 WAC;

(D) Private adult treatment homes, per chapter 246-325 WAC;

(E) Residential treatment facilities for psychiatrically impaired children and youth, per chapter 246-323 WAC;

(vi) A hospital licensed under chapter 70.41 RCW.

NEW SECTION

WAC 246-100-204 Special diseases--Human immunodeficiency virus (HIV)--Absence of HIV as an occupational qualification.

For the purpose of RCW 49.60.172 concerning the absence of HIV infection as a bona fide occupational qualification only, "significant risk" means a job qualification which requires person-to-person contact likely to result in direct introduction of blood into the eye, an open cut or wound, or other interruption of the epidermis, when:

- (1) No adequate barrier protection is practical; and
- (2) Determined only on case-by-case basis consistent with RCW 49.60.180.

NEW SECTION

WAC 246-100-205 Special diseases--HIV--Testing and counseling following occupational exposure. A person who has experienced a substantial exposure to another person's bodily fluids in a manner that presents a possible risk of transmission of HIV, and who is exposed while engaged in a category of employment determined to be at risk of substantial exposure to HIV, may ask a state or local health officer to order pretest counseling, HIV testing, and post-test counseling of the person who was the source of the bodily fluids in accordance with RCW 70.24.340.

(1) Substantial exposure that presents a possible risk of transmission shall be limited to:

(a) A physical assault upon the exposed person involving blood or semen;

(b) Intentional, unauthorized, nonconsensual use of needles or sharp implements to inject or mutilate the exposed person; or

(c) An accidental parenteral or mucous membrane or nonintact skin exposure to blood, semen, or vaginal fluids.

(2) The alleged exposure must have occurred on the job while the individual was employed or acting as an authorized volunteer in one of the following employment categories that are at risk of substantial exposure to HIV:

(a) Law enforcement officer;

(b) Fire fighter;

(c) Health care provider;

- (d) Staff of health care facilities;
- (e) Funeral director; or
- (f) Embalmer.

(3) The health officer shall:

(a) Determine that the alleged exposure meets the criteria established in this section for substantial exposure that presents a possible risk of transmission; and

(b) Ensure that pretest counseling of the individual to be tested, or a legal representative, occurs; and

(c) Arrange for testing of the individual who is the source of the exposure to occur within seven days of the request from the person exposed; and

(d) Ensure that records on HIV testing ordered by a health officer are maintained only by the ordering health officer.

(4) The health officer, as a precondition for ordering counseling and testing of the person who was the source of the bodily fluids, may require that the exposed individual agree to be tested for HIV if such testing is determined appropriate by the health officer.

(5) This section does not apply to the department of corrections or to inmates in its custody or subject to its jurisdiction.

AMENDATORY SECTION (Amending WSR 02-12-106, filed 6/5/02, effective 7/6/02)

WAC 246-100-206 Special diseases--(~~(Sexually transmitted diseases)~~) HIV--Testing and counseling of jail detainees. (~~((1)~~
~~Any person who violates a rule adopted by the board for the control and treatment of a sexually transmitted disease is subject to penalty under RCW 70.24.080.~~

~~(2) Definitions.~~

~~(a) "Anonymous HIV testing" means that the name or identity of the individual tested for HIV will not be recorded or linked to the HIV test result. However, once the individual testing positive receives HIV health care or treatment services, reporting of the identity of the individual to the state or local public health officer is required.~~

~~(b) "Behaviors presenting imminent danger to public health (BPID)" means the following activities, under conditions specified below, performed by an individual with a laboratory confirmed HIV infection:~~

- ~~(i) Anal or vaginal intercourse without a latex condom; or~~
- ~~(ii) Shared use of blood-contaminated injection equipment;~~
- ~~(iii) Donating or selling HIV-infected blood, blood~~

~~products, or semen; and~~

~~(iv) Under the following specified conditions:~~

~~(A) The infected individual received post-test counseling as described in WAC 246-100-209 prior to repeating activities in subsection (2)(b)(i) and (ii) of this section; and~~

~~(B) The infected individual did not inform the persons, with whom activities described in subsection (2)(b)(i) and (ii) of this section occurred, of his or her infectious status.~~

~~(c) "Behaviors presenting possible risk" means:~~

~~(i) Actual actions resulting in "exposure presenting a possible risk" limited to:~~

~~(A) Anal, oral, or vaginal intercourse excluding conjugal visits; or~~

~~(B) Physical assault; or~~

~~(C) Sharing of injection equipment or sharp implements; or~~

~~(D) Throwing or smearing of blood, semen, or vaginal fluids; or~~

~~(ii) Threatened action if:~~

~~(A) The threatening individual states he or she is infected with HIV; and~~

~~(B) The threatened behavior is listed in subsection (2)(b)(i)(A), (B), (C), and (D) of this section; and~~

~~(C) The threatened behavior could result in "exposure presenting a possible risk."~~

~~(d) "Conduct endangering public health" means:~~

~~(i) Anal, oral, or vaginal intercourse for all sexually transmitted diseases;~~

~~(ii) For HIV and Hepatitis B:~~

~~(A) Anal, oral, or vaginal intercourse; and/or~~

~~(B) Sharing of injection equipment; and/or~~

~~(C) Donating or selling blood, blood products, body tissues, or semen; and~~

~~(iii) Activities described in subsection (2)(d)(i) and (ii) of this section resulting in introduction of blood, semen, and/or vaginal fluids to:~~

~~(A) Mucous membranes;~~

~~(B) Eyes;~~

~~(C) Open cuts, wounds, lesions; or~~

~~(D) Interruption of epidermis.~~

~~(e) "Confidential HIV testing" means that the name or identity of the individual tested for HIV will be recorded and linked to the HIV test result, and that the name of the individual testing positive for HIV will be reported to the state or local health officer in a private manner.~~

~~(f) "Exposure presenting possible risk" means one or more of the following:~~

~~(i) Introduction of blood, semen, or vaginal fluids into:~~

~~(A) A body orifice or a mucous membrane;~~

~~(B) The eye; or~~

~~(C) An open cut, wound, lesion, or other interruption of the epidermis.~~

~~(ii) A needle puncture or penetrating wound resulting in exposure to blood, semen, and/or vaginal fluids.~~

~~(g) "Reasonably believed" or "reason to believe," in reference to a sexually transmitted disease, means a health officer's belief which:~~

~~(i) For the purpose of investigating the source and spread of disease, is based upon a credible report from an identifiable individual indicating another person is likely to have a sexually transmitted disease (STD) or to have been exposed to a STD; and~~

~~(ii) For the purpose of issuing a written order for an individual to submit to examination, counseling, or treatment is based upon:~~

~~(A) Laboratory test results confirming or suggestive of a STD; or~~

~~(B) A health care provider's direct observation of clinical signs confirming an individual has or is likely to have a STD; or~~

~~(C) Obtaining information directly from an individual infected with a STD about the identity of his or her sexual or needle sharing contacts when:~~

~~(I) Contact with the infected individual occurred during a period when the disease may have been infectious; and~~

~~(II) The contact was sufficient to transmit the disease; and~~

~~(III) The infected individual is, in the health officer's judgment, credible and believable.~~

~~(h) "Substantial exposure" means physical contact resulting in exposure presenting possible risk, limited to:~~

~~(i) A physical assault upon the exposed person involving blood or semen;~~

~~(ii) Intentional, unauthorized, nonconsensual use of needles or sharp implements to inject or mutilate the exposed person;~~

~~(iii) An accidental parenteral or mucous membrane or nonintact skin exposure to blood, semen, or vaginal fluids.~~

~~(3) Health care providers shall:~~

~~(a) Report each case of sexually transmitted disease as required in chapter 246-100 WAC, and~~

~~(b) Instruct each patient regarding:~~

~~(i) Communicability of the disease, and~~

~~(ii) Requirements to refrain from acts that may transmit the disease to another.~~

~~(c) Ensure completion of a prenatal serologic test for syphilis in each pregnant woman pursuant to RCW 70.24.090 including:~~

~~(i) Submission of a blood sample for syphilis to a~~

~~laboratory approved to perform prenatal serologic tests for syphilis, as required in RCW 70.24.090, at the time of the first prenatal visit, and~~

~~(ii) Decide whether or not to omit the serologic test for syphilis if the test was performed elsewhere during the current pregnancy.~~

~~(4) Laboratories, health care providers, and other persons shall deny issuance of a certificate or statement implying an individual is free from sexually transmitted disease.~~

~~(5) Local health officers, health care providers, and others, in addition to requirements in chapter 246-100 WAC, shall comply with the provisions in chapter 70.24 RCW.~~

~~(6) Prevention of ophthalmia neonatorum.~~

~~(a) Health care providers diagnosing or caring for a patient with gonococcal or chlamydial ophthalmia neonatorum shall report the case to the local health officer or local health department in accordance with the provisions of this chapter.~~

~~(b) The principal health care provider attending or assisting in the birth of any infant or caring for an infant after birth, shall ensure instillation of a department approved prophylactic ophthalmic agent into the conjunctival sacs of the infant within the time frame established by the department in policy statement of ophthalmia agents approved for the prevention of ophthalmia neonatorum in the newborn, issued June 19, 1981.~~

~~(7) State and local health officers or their authorized representatives shall:~~

~~(a) Have authority to conduct or cause to be conducted an interview and investigation of persons infected or reasonably believed to be infected with a sexually transmitted disease; and~~

~~(b) Use procedures and measures described in WAC 246-100-036(4) in conducting investigations.~~

~~(8) State and local health officers and their authorized representatives shall have authority to:~~

~~(a) Issue written orders for medical examination, testing, and/or counseling under chapter 70.24 RCW, only after:~~

~~(i) All other efforts to protect public health have failed, including reasonable efforts to obtain the voluntary cooperation of the person to be affected by the order; and~~

~~(ii) Having sufficient evidence to "reasonably believe" the individual to be affected by the order:~~

~~(A) Has a sexually transmitted disease; and~~

~~(B) Is engaging in "conduct endangering public health"; and~~

~~(iii) Investigating and confirming the existence of "conduct endangering public health" by:~~

~~(A) Interviewing sources to assess their credibility and accuracy; and~~

~~(B) Interviewing the person to be affected by the order;~~

and

~~(iv) Including in a written order all information required in RCW 70.24.024.~~

~~(b) Issue written orders for treatment under RCW 70.24.022 only after laboratory test results, or direct observation of clinical signs or assessment of clinical data by a physician, confirm the individual has, or is likely to have, a sexually transmitted disease;~~

~~(c) Issue written orders to cease and desist from specified activities, under RCW 70.24.024 only after:~~

~~(i) Determining the person to be affected by the order is engaging in "conduct endangering public health"; and~~

~~(ii) Laboratory test results, or direct observation of clinical signs or assessment of clinical data by a physician, confirm the individual has, or is likely to have, a sexually transmitted disease; and~~

~~(iii) Exhausting procedures described in subsection (8)(a) of this section; and~~

~~(iv) Enlisting, if appropriate, court enforcement of the orders described in subsection (8)(a) and (b) of this section; and~~

~~(d) Seek court orders for detainment under RCW 70.24.034, only for persons infected with HIV and only after:~~

~~(i) Exhausting procedures described in subsection (8)(a), (b), and (c) of this section; and~~

~~(ii) Enlisting, if appropriate, court enforcement of orders to cease and desist; and~~

~~(iii) Having sufficient evidence to "reasonably believe" the person is engaging in "behaviors presenting an imminent danger to public health."~~

~~(9) Conditions for detainment of individuals infected with sexually transmitted disease.~~

~~(a) A local health officer may notify the state health officer if he or she determines:~~

~~(i) The criteria for "behaviors presenting imminent danger to public health (BPID)" are met by an individual; and~~

~~(ii) Such individual fails to comply with a cease and desist order affirmed or issued by a court.~~

~~(b) A local or state health officer may request the prosecuting attorney to file an action in superior court to detain an individual specified in subsection (9)(a) of this section.~~

~~(c) The requesting local or state health officer or authorized representative shall:~~

~~(i) Notify the department prior to recommending the detainment setting where the individualized counseling and education plan may be carried out consistent with subsection (9)(d), (e), and (f) of this section;~~

~~(ii) Make a recommendation to the court for placement of~~

~~such individual consistent with subsection (9)(d) and (f) of this section; and~~

~~(iii) Provide to the court an individualized plan for education and counseling consistent with subsection (9)(e) of this section.~~

~~(d) State board of health requirements for detainment of individuals demonstrating BPID:~~

~~(i) Sufficient number of staff, caregivers, and/or family members to:~~

~~(A) Provide round the clock supervision, safety of detainee, and security; and~~

~~(B) Limit and restrict activities to prevent BPID; and~~

~~(C) Make available any medical, psychological, or nursing care when needed; and~~

~~(D) Provide access to AIDS education and counseling; and~~

~~(E) Immediately notify the local or state health officer of unauthorized absence or elopement; and~~

~~(ii) Sufficient equipment and facilities to provide:~~

~~(A) Meals and nourishment to meet nutritional needs; and~~

~~(B) A sanitary toilet and lavatory; and~~

~~(C) A bathing facility; and~~

~~(D) Bed and clean bedding appropriate to size of detainee; and~~

~~(E) A safe detention setting appropriate to chronological and developmental age of detainee; and~~

~~(F) A private sleeping room; and~~

~~(G) Prevention of sexual exploitation.~~

~~(iii) Sufficient access to services and programs directed toward cessation of BPID and providing:~~

~~(A) Linguistically, socially, culturally, and developmentally appropriate ongoing AIDS education and counseling; and~~

~~(B) Psychological and psychiatric evaluation and counseling; and~~

~~(C) Implementation of court-ordered plan for individualized counseling and education consistent with subsection (9)(e) of this section.~~

~~(iv) If required, provide access to isolation and/or restraint in accordance with restraint and seclusion rules in WAC 275-55-263 (2)(e);~~

~~(v) Maintain a safe, secure environment free from harassment, physical danger, and sexual exploitation.~~

~~(e) Washington state board of health standards for an individualized counseling and education plan for a detainee include:~~

~~(i) Consideration of detainee's personal and environmental characteristics, culture, social group, developmental age, and language;~~

~~(ii) Identification of habitual and addictive behavior and~~

~~relapse pattern;~~

~~(iii) Identification of unique risk factors and possible cross-addiction leading to behavior presenting imminent danger to public health;~~

~~(iv) Identification of obstacles to behavior change and determination of specific objectives for desired behavior;~~

~~(v) Provision of information about acquisition and transmission of HIV infection;~~

~~(vi) Teaching and training of individual coping skills to prevent relapse to BPID;~~

~~(vii) Specific counseling for chemical dependency, if required;~~

~~(viii) Identification of and assistance with access to community resources, including social services and self help groups appropriate to provide ongoing support and maintenance of behavior change; and~~

~~(ix) Designation of a person primarily responsible for counseling and/or education who:~~

~~(A) Completed pretest and post-test counselor training approved by the office on AIDS; and~~

~~(B) Received training, as approved by the office on AIDS, focused on facilitating behavior change related to preventing BPID; and~~

~~(C) Has a post-graduate degree in social work, psychology, counseling, psychosocial nursing, or other allied profession; and~~

~~(D) Completed at least one year clinical experience after post-graduate education with a primary focus on individualized behavior change; and~~

~~(E) Is a certified counselor under chapter 18.19 RCW.~~

~~(x) Designation and provision of a qualified counselor under WAC 275-19-145 when the detainee is assessed to have a drug or alcohol problem.~~

~~(f) The state board of health designates the following settings appropriate for detainment provided a setting meets requirements in subsection (9)(d)(i), (ii), (iii), (iv), and (v) of this section:~~

~~(i) Homes, care facilities, or treatment institutions operated or contracted by the department;~~

~~(ii) Private homes, as recommended by the local or state health officer;~~

~~(iii) Boarding homes licensed under chapter 18.20 RCW;~~

~~(iv) Nursing homes licensed under chapter 18.51 RCW;~~

~~(v) Facilities licensed under chapter 71.12 RCW, including:~~

~~(A) Psychiatric hospitals, per chapter 246-322 WAC;~~

~~(B) Alcoholism treatment centers if certified for substance use under chapter 275-19 WAC;~~

~~(C) Adult residential rehabilitation centers, per chapter 246-325 WAC;~~

~~(D) Private adult treatment homes, per chapter 246-325 WAC;~~
~~(E) Residential treatment facilities for psychiatrically impaired children and youth, per chapter 246-323 WAC;~~
~~(vi) A hospital licensed under chapter 70.41 RCW.~~

~~(10) Jail administrators may order pretest counseling, post test counseling, and HIV testing of persons detained in jail according to RCW 70.24.360 only under the following conditions:~~

~~(a) The jail administrator documents and reports to the local health officer, within seven days after the incident, any incident perceived to be actual or threatened "behaviors presenting possible risk"; and~~

~~(b) The local health officer:~~

~~(i) Determines the documented behavior or behaviors meet the criteria established in the definition of "behaviors presenting a possible risk"; and~~

~~(ii) Interviews the detained individual to evaluate the factual basis for alleged actual or threatened behavior; and~~

~~(iii) Makes a fact determination, based upon the documented behavior, the interview with the detained individual, and/or independent investigation, that sufficient factual evidence exists to support the allegation of actual or threatened "behaviors presenting possible risk"; and~~

~~(iv) Arranges for testing of the individual who is the source of the behavior to occur within seven days of the request from the jail administrator; and~~

~~(v) Reviews with the detained individual who is the source of the behavior the documentation of the actual or threatened behavior to try to assure understanding of the basis for HIV testing; and~~

~~(vi) Provides written approval of the jail administrator's order prior to HIV testing in accordance with subsection (7)(a)(i) of this section.~~

~~(c) The jail administrator maintains HIV test results and identity of the tested individual as a confidential, nondisclosable record, as provided in RCW 70.24.105.~~

~~(11) When an individual experiences a substantial exposure to another individual's body fluids and requests HIV testing of that other individual, the state and local health officers have authority to order pretest counseling, HIV testing, and post-test counseling of that other individual providing:~~

~~(a) The alleged exposure occurred when the individual was employed or acting as an authorized volunteer in one of the following employment categories:~~

~~(i) Law enforcement officer;~~

~~(ii) Firefighter;~~

~~(iii) Health care provider;~~

~~(iv) Staff of health care facilities;~~

~~(v) Funeral director;~~

~~(vi) Embalmer; and~~
~~(b) The alleged substantial exposure occurred on the job;~~
and
~~(c) The request to the health officer for testing and counseling of the individual was made within seven days of the occurrence of the alleged exposure; and~~
~~(d) The local health officer:~~
~~(i) Determines that the alleged exposure meets the criteria established in the definition of "substantial exposure"; and~~
~~(ii) Ensures that pretest counseling of the individual to be tested, or a legal representative, occurs; and~~
~~(iii) Arranges for testing of the individual who is the source of the exposure to occur within seven days of the request from the person exposed; and~~
~~(e) The exposed individual agrees to be tested for HIV if such testing is determined appropriate by the health officer; and~~
~~(f) Records on HIV testing ordered by a health officer are maintained only by the ordering health officer.~~
~~(12) For the purpose of RCW 49.60.172 concerning the absence of HIV infection as a bona fide occupational qualification only, "significant risk" means a job qualification which requires person to person contact likely to result in direct introduction of blood into the eye, an open cut or wound, or other interruption of the epidermis, when:~~
~~(a) No adequate barrier protection is practical; and~~
~~(b) Determined only on case-by-case basis consistent with RCW 49.60.180.)~~
Jail administrators, with the approval of the local public health officer, may order pretest counseling, HIV testing and post-test counseling of a jail detainee in accordance with RCW 70.24.360, provided that the local public health officer determines that the detainee's actual or threatened behavior presents a possible risk to the staff, general public, or other persons.
(1) Actual behaviors present a possible risk if they result in "exposure presenting a possible risk" and involve one of the following actions:
(a) Anal, oral, or vaginal intercourse excluding conjugal visits; or
(b) Physical assault; or
(c) Sharing of injection equipment or sharp implements; or
(d) Throwing or smearing of blood, semen, or vaginal fluids; or
(2) Threatened behaviors present a "possible risk" if:
(a) The threatening individual states he or she is infected with HIV; and
(b) The threatened behavior is listed in subsection (1)(a), (b), (c), or (d) of this section; and
(c) The threatened behavior could result in "exposure

presenting a possible risk."

(3) For purposes of subsections (1) and (2) of this section, "exposure presenting possible risk" means one or more of the following:

(a) Introduction of blood, semen, or vaginal fluids into:

(i) A body orifice or a mucous membrane;

(ii) The eye; or

(iii) An open cut, wound, lesion, or other interruption of the epidermis.

(b) A needle puncture or penetrating wound resulting in exposure to blood, semen, and/or vaginal fluids.

(4) Jail administrators may order pretest counseling, post-test counseling, and HIV testing only under the following conditions:

(a) The jail administrator documents and reports to the local health officer, within seven days after the incident, any incident perceived to be actual or threatened "behaviors presenting possible risk"; and

(b) The local health officer:

(i) Determines the documented behavior or behaviors meet the criteria established in this section for behaviors presenting a "possible risk"; and

(ii) Interviews the detained individual to evaluate the factual basis for alleged actual or threatened behavior; and

(iii) Makes a fact determination, based upon the documented behavior, the interview with the detained individual, and/or independent investigation, that sufficient factual evidence exists to support the allegation of actual or threatened "behaviors presenting possible risk"; and

(iv) Arranges for testing of the individual who is the source of the behavior to occur within seven days of the request from the jail administrator; and

(v) Reviews with the detained individual who is the source of the behavior the documentation of the actual or threatened behavior to try to assure understanding of the basis for HIV testing; and

(vi) Provides written approval of the jail administrator's order prior to HIV testing.

(c) The jail administrator maintains HIV test results and identity of the tested individual as a confidential, nondisclosable record, as provided in RCW 70.24.105.

AMENDATORY SECTION (Amending WSR 02-12-106, filed 6/5/02, effective 7/6/02)

WAC 246-100-207 Human immunodeficiency virus (HIV) testing--Ordering--Laboratory screening--Interpretation--Reporting.

(1) Any person ordering or prescribing an HIV test for another, except for seroprevalent studies under chapter 70.24 RCW or provided under subsections (2) and (3) of this section or provided under WAC 246-100-208(1), shall:

(a) Provide ~~((or refer for pretest counseling described under WAC 246-100-209))~~ a brief evaluation of both behavioral and clinical HIV risk factors; and

(b) Unless the person has been previously tested and declines receipt of information, provide verbal or written information that is culturally, linguistically, developmentally and, medically appropriate to the individual being tested regarding HIV including:

(i) The benefits of learning HIV status and the potential dangers of the disease; and

(ii) A description of ways in which HIV is transmitted and ways in which it can be prevented; and

(iii) The meaning of HIV test results and the importance of obtaining test results; and

(iv) As appropriate, the availability of anonymous HIV testing and the differences between anonymous testing and confidential testing; and

(c) Obtain or ensure verbal or written informed specific consent of the individual to be tested ~~((separate from other consents))~~ prior to ordering or prescribing an HIV test, unless excepted under provisions in chapter 70.24 RCW and document the consent of the individual being tested; and

~~((c) Inform, orally or in writing, the individual to be tested of the availability of anonymous HIV testing and of the differences between "anonymous HIV testing" and "confidential HIV testing"; and))~~

(d) Recommend and offer or refer for pretest counseling described under WAC 246-100-209 to any person requesting pretest counseling and to any person determined to be at increased risk for HIV as defined by Federal Centers for Disease Control and Prevention published in *Revised Guidelines for HIV Counseling, Testing and Referral*, November 9, 2001. The individual's decision to refuse pretest counseling is not grounds for denying HIV testing; and

(e) Provide or refer for other appropriate prevention,

support or medical services, including Hepatitis services; and

(f) Provide or ((refer)) ensure successful completion of referral for post-test counseling described under WAC 246-100-209 if the HIV test is positive for or suggestive of HIV infection; and

(g) In the event that the individual tests positive, had a confidential test, and fails to return for post-test counseling, provide the name of the individual and locating information to the local health officer for follow-up to provide post-test counseling as required by WAC 246-100-209(2).

(2) Any person authorized to order or prescribe an HIV test for another may offer anonymous HIV testing without restriction.

(3) Blood banks, tissue banks, and others collecting or processing blood, sperm, tissues, or organs for transfusion/transplanting shall:

(a) Obtain or ensure informed specific consent of the individual prior to ordering or prescribing an HIV test, unless excepted under provisions in chapter 70.24 RCW;

(b) Explain that the reason for HIV testing is to prevent contamination of the blood supply, tissue, or organ bank donations;

(c) At the time of notification regarding a positive HIV test, provide or ensure at least one individual counseling session; and

(d) Inform the individual that the name of the individual testing positive for HIV infection will be confidentially reported to the state or local health officer.

(4) Persons subject to regulation under Title 48 RCW and requesting an insured, subscriber, or potential insured or subscriber to furnish the results of an HIV test for underwriting purposes, as a condition for obtaining or renewing coverage under an insurance contract, health care service contract, or health maintenance organization agreement shall:

(a) Before obtaining a specimen to perform an HIV test, provide written information to the individual tested explaining:

(i) What an HIV test is;

(ii) Behaviors placing a person at risk for HIV infection;

(iii) The purpose of HIV testing in this setting is to determine eligibility for coverage;

(iv) The potential risks of HIV testing; and

(v) Where to obtain HIV pretest counseling.

(b) Obtain informed specific written consent for an HIV test. The written informed consent shall include:

(i) An explanation of confidential treatment of test result reports limited to persons involved in handling or determining applications for coverage or claims for the applicant or claimant; and

(ii) That the name of the individual testing positive for HIV infection will be confidentially reported to the state or

local health officer; and

(iii) Requirements under subsection (4)(c) of this section.

(c) Establish procedures to inform an applicant of the following:

(i) Post-test counseling specified under WAC 246-100-209~~((+4))~~(2) is required if an HIV test is positive or indeterminate;

(ii) Post-test counseling is done at the time any positive or indeterminate HIV test result is given to the tested individual;

(iii) The applicant is required to designate a health care provider or health care agency to whom positive or indeterminate HIV test results are to be provided for interpretation and post-test counseling; and

(iv) When an individual applicant does not identify a designated health care provider or health care agency and the applicant's HIV test results are positive or indeterminate, the insurer, health care service contractor, or health maintenance organization shall provide the test results to the state or local health department for interpretation and post-test counseling.

(5) Laboratories and other places where HIV testing is performed ~~((shall))~~ must demonstrate ~~((complete and satisfactory participation in an HIV proficiency testing program approved by the Department Laboratory Quality Assurance Section, Mailstop K17-9, 1610 N.E. 150th, Seattle, Washington 98155))~~ compliance with all of the requirements in the Medical test site rules, chapter 246-338 WAC.

(6) The department laboratory quality assurance section shall accept substitutions for EIA screening only as approved by the United States Food and Drug Administration (FDA) and a published list or other written FDA communication.

(7) Persons informing a tested individual of positive laboratory test results indicating HIV infection shall do so only when:

~~(a) ((HIV is isolated by viral culture technique; or
(b) HIV nucleic acid (RNA or DNA) is detected; or
(c) HIV is detected through a P24 antigen (neutralizable) test; or~~

~~(d) HIV antibodies are identified by a sequence of tests which are reactive and include:~~

~~(i) A repeatedly reactive screening test such as the enzyme immunoassay (EIA); and~~

~~(ii) An additional, more specific, assay such as a positive western blot assay (WBA) or other tests as approved by the United States Food and Drug Administration (FDA) in a published list or other written FDA communication.~~

(e)) The test or sequence of tests has been approved by the United States Food and Drug Administration (FDA) or the

Federal Centers for Disease Control and Prevention as a confirmed positive test result; and

(b) Such information consists of relevant, pertinent facts communicated in such a way that it will be readily understood by the recipient.

(8) Persons may inform a tested individual of the unconfirmed reactive results of an FDA-approved rapid HIV test provided the test result is interpreted as preliminarily positive for HIV antibodies, and the tested person is informed that:

(a) Further testing is necessary to confirm the reactive screening test result;

(b) The meaning of reactive screening test result is explained in simple terms, avoiding technical jargon;

(c) The importance of confirmatory testing is emphasized and a return visit for confirmatory test results is scheduled; and

(d) The importance of taking precautions to prevent transmitting infection to others while awaiting results of confirmatory testing is stressed.

AMENDATORY SECTION (Amending WSR 02-12-106, filed 6/5/02, effective 7/6/02)

WAC 246-100-208 Counseling standard--AIDS counseling. (1) Principal health care providers shall counsel or ensure AIDS counseling for each pregnant woman continuing the pregnancy. This subsection shall not apply when health care is sought in order to terminate a pregnancy or as a result of a terminated pregnancy. "AIDS counseling" for a pregnant woman means:

(a) Performing a risk screening that includes an assessment of sexual and drug use history as part of the intake process;

(b) Providing written or verbal information on HIV infection that at a minimum includes:

(i) All pregnant women are recommended to have an HIV test;

(ii) HIV is the cause of AIDS and how HIV is transmitted;

(iii) A woman may be at risk for HIV infection, and not know it;

(iv) The efficacy of treatments to reduce vertical transmission;

(v) The availability of anonymous testing, and why confidential testing is recommended for pregnant women;

(vi) The need to report HIV infection;

(vii) Public funds are available to assist eligible HIV-infected women receive medical care and other assistance; and

(viii) Women who decline testing will not be denied care for themselves or their infants;

(c) Obtaining the informed consent of the pregnant woman, separately or as part of the consent for a battery of other routine tests provided that the woman is specifically informed in writing or verbally that a test for HIV is included;

(d) Providing HIV testing unless the pregnant woman refuses to give consent;

(e) If the pregnant woman refuses a confidential test, discussing and addressing reasons for refusal and document in the medical record that refusal and the provision of education on the benefits of HIV testing;

(f) If the risk screening indicates, providing or referring for behavioral change counseling for women who:

(i) Have or recently have had a sexual partner(s) who is known to be HIV infected or is a man who has sex with another man or is an injection drug user;

(ii) Uses or recently have used injection drugs;

(iii) (~~Has~~) Have signs or symptoms of HIV seroconversion;

(iv) Currently have or (~~has~~) recently have exchanged sex for drugs or money or had a sexually transmitted disease or had multiple sex partners; or

(v) Express(~~es~~) a need for further, more intensive counseling; and

(g) Basing the behavioral change counseling on the standards defined in WAC 246-100-209 and the recommendations of the federal Centers for Disease Control and Prevention published in *Revised Guidelines for HIV Counseling, Testing and Referral*, and *Revised Recommendations for HIV Screening of Pregnant Women*, November 9, 2001; and

(h) Offering referrals and providing follow-up to other necessary medical, social and HIV prevention services.

(2) Health care providers may obtain a sample brochure addressing the elements of subsection (1)(b) of this section by contacting the department of health's HIV prevention program at P.O. Box 47840, Olympia, WA 98504-7840.

(3) Principal health care providers shall counsel or ensure AIDS counseling as defined in WAC 246-100-011(2) and offer and encourage HIV testing for each patient seeking treatment of a sexually transmitted disease.

(4) Drug treatment programs under chapter 70.96A RCW shall provide or ensure provision of AIDS counseling as defined in WAC 246-100-011(2) for each person in a drug treatment program.

(5) Health care providers, persons, and organizations providing AIDS counseling in subsections (3) and (4) of this section shall:

(a) Assess the behaviors of each individual counseled for risk of acquiring and transmitting human immunodeficiency virus (HIV);

(b) Maintain a nonjudgmental environment during counseling which:

(i) Considers the individual's particular circumstances; and

(ii) Is culturally, (~~socially,~~) linguistically, and developmentally appropriate to the individual being counseled.

(c) Focus counseling on behaviors increasing the risk of HIV acquisition and transmission;

(d) Offer or refer for HIV testing and provide or ensure provision of personalized risk reduction education to individuals who(+)

~~(i) Are men who had sex with other men at any time since 1977;~~

~~(ii) Used intravenous substances at any time since 1977;~~

~~(iii) Engaged in sex for money or drugs at any time since 1977;~~

~~(iv) Have had sexual and/or injection equipment sharing contact with persons listed in (d)(i), (ii), and (iii) of this subsection;~~

~~(v) Have been exposed to or known to have had a sexually transmitted disease at any time since 1977;~~

~~(vi) Are at increased risk of HIV infection by definition of United States Public Health Service, Centers for Disease Control and Prevention;~~

~~(vii) Are enrolled in a drug treatment program under chapter 69.54 RCW; or~~

~~(viii) Received multiple transfusions of blood, plasma, or blood products from 1977 to 1985.~~

~~(e) Encourage individuals assessed to be at other than virtually no risk of HIV infection to:~~

~~(i) Receive AIDS risk reduction counseling;~~

~~(ii) Consider information about the nature, purpose, and potential ramifications of HIV testing;~~

~~(iii) Receive pretest counseling;~~

~~(iv) Consider confidential or anonymous voluntary HIV testing if appropriate and understand the differences between "anonymous HIV testing" and "confidential HIV testing"; and~~

~~(v) "Virtually no risk of HIV infection" means persons with medical histories absent of and reporting none of the following factors:~~

~~(A) Transfusion with blood or blood products at any time since 1977;~~

~~(B) Residence at any time in countries where HIV is considered endemic since 1977;~~

~~(C) Unprotected sex between men at any time since 1977;~~

~~(D) Use of intravenous substances at any time since 1977, especially when sharing injection equipment;~~

~~(E) Engagement in sex for money or drugs at any time since 1977;~~

~~(F) Sexual and/or injection equipment sharing contacts at any time since 1977 with persons listed in (c)(v)(C), (D), and (E) of this subsection;~~

~~(G) Exposure to a sexually transmitted disease; and~~

~~(H) Increased risk of HIV infection by definition of United States Public Health Service, Centers for Disease Control and Prevention)) are determined to be at increased risk for HIV as defined by Federal Centers for Disease Control and Prevention published in Revised Guidelines for HIV Counseling, Testing and Referral, November 9, 2001.~~

(6) Persons and organizations providing AIDS counseling may provide additional or more comprehensive counseling than required in this section.

AMENDATORY SECTION (Amending WSR 99-17-077, filed 8/13/99, effective 9/1/99)

WAC 246-100-209 Counseling standards--Human immunodeficiency virus (HIV) pretest counseling--HIV post-test counseling.

(1) Health care providers and other persons providing pretest counseling shall((÷

~~(a))~~ assess the individual's risk of acquiring and transmitting HIV by evaluating information about the individual's possible risk-behaviors((÷

~~(b) Provide at least one individual counseling session prior to HIV testing;~~

~~(c) Inform in writing or orally any individual planning to be tested for HIV that:~~

~~(i) Anonymous HIV testing is available through the local health department, home testing kits, or may be available through other community sources, and explain the differences between "anonymous HIV testing" and "confidential HIV testing"; and~~

~~(ii) If the test result is positive, sex and injection equipment sharing partners, including spouses must be notified that they:~~

~~(A) May have been exposed to and infected with HIV; and~~

~~(B) Should seek HIV pretest counseling and consider HIV testing; and~~

~~(iii) The principal health care provider is required to refer identities of at-risk partners to the local health officer or authorized representative if:~~

~~(A) The HIV infected individual either refuses or is unable to notify partners of exposure, possible infection, and need for pretest counseling and HIV testing; or~~

~~(B) The HIV infected individual neither accepts assistance nor agrees to referral to the local health officer or an authorized representative for assistance in notifying partners; and~~

~~(iv) Unless HIV testing is anonymous, the principal health care provider is required to confidentially refer the identity of the individual testing positive to the local health officer or an authorized representative.~~

~~(2) When an individual is assessed by a counselor or health care provider as "virtually no risk of HIV infection," as defined in WAC 246-100-208 (3)(e)(v) a counselor or the health care provider shall, in addition to subsection (1)(a) of this section:~~

~~(a) Maintain a nonjudgmental environment during counseling which:~~

~~(i) Considers the individual's particular circumstances; and~~

~~(ii) Is culturally, socially, linguistically, and developmentally appropriate to the individual being counseled.~~

~~(b) Explain the nature, purpose, value, and reason for the HIV tests;~~

~~(c) In writing or orally, inform the individual to be tested that anonymous HIV testing is available through the local health department, home testing kits, or may be available through other community sources, and explain the differences between "anonymous HIV testing" and "confidential HIV testing;"~~

~~(d) Explain the possible effect of HIV testing and a positive HIV test result related to employment, insurance, housing, and other potential legal, social, and personal consequences;~~

~~(e) Develop and maintain a system of referral and make referrals that:~~

~~(i) Are accessible and confidential for those counseled;~~

~~(ii) Are acceptable to and supportive of those counseled;~~

~~(iii) Provide assistance to those counseled in maintaining risk reduction behaviors.~~

~~(f) Provide at least one individual counseling session at the time HIV test results are disclosed to individuals testing positive; and~~

~~(g) Maintain disclosure and confidentiality requirements in WAC 246-100-016.~~

~~(3) If the individual is assessed by a health care provider to be other than "virtually no risk of HIV infection," as defined in WAC 246-100-208 (3)(e)(v), the person providing pretest counseling shall maintain requirements in subsection (1) and (2) of this section and:~~

~~(a) Focus counseling on behaviors increasing the risk of HIV acquisition and transmission;~~

~~(b) Provide personalized risk reduction education to~~

~~individuals who:~~

~~(i) Are men engaging in unprotected intercourse with other men at any time since 1977;~~

~~(ii) Used intravenous substances at any time since 1977, especially those sharing injection equipment;~~

~~(iii) Engaged in sex for money or drugs at any time since 1977;~~

~~(iv) Have had sexual and/or injection equipment-sharing contacts at any time since 1977 with persons listed in subsection (3)(b)(i), (ii), and (iii) of this section;~~

~~(v) Have been exposed to or diagnosed with a sexually transmitted disease;~~

~~(vi) Are at increased risk of HIV infection by definition of United States Public Health Services, Centers for Disease Control;~~

~~(vii) Are required by RCW 70.24.095 and 70.24.340 to receive HIV counseling and testing.~~

~~(c) Inform any individual planning to be tested for HIV of the need to notify sexual and injection equipment-sharing partners, including spouses, if test results are positive;~~

~~(d) Advise individuals listed in subsection (3)(b)(i), (ii), and (iii) of this section not to donate or sell blood, blood products, semen, organs, or other body tissues; and~~

~~(e) Emphasize or reemphasize the following counseling messages:~~

~~(i) The following will eliminate or decrease the risk of HIV infection:~~

~~(A) Sexual abstinence;~~

~~(B) A mutually monogamous relationship between uninfected people; and~~

~~(C) Following safer sex guidelines.~~

~~(ii) Do not share intravenous drugs and injection equipment;~~

~~(iii) Do not engage in behaviors in which blood, vaginal fluid, or semen is exchanged;~~

~~(iv) Condoms, even if used properly, do not supply absolute protection from HIV infection;~~

~~(v) Condoms may reduce risk of HIV infection if the condom is:~~

~~(A) Latex and used with a water-based lubricant rather than an oil-based lubricant, if a lubricant is used;~~

~~(B) Used in conjunction with spermicide during vaginal or anal intercourse; and~~

~~(C) Worn from start to finish of vaginal, oral, and anal intercourse.~~

~~(vi) Dental dams may reduce risk of HIV infection if the dental dam is:~~

~~(A) Latex; and~~

~~(B) Used from start to finish of oral intercourse.~~

~~(vii) The sexual behaviors having highest risk for HIV infection are those involving the exchange of blood or semen, especially receptive anal and vaginal intercourse;~~

~~(viii) Anal intercourse may increase the risk of condom failure and HIV infection;~~

~~(ix) Infected women should postpone pregnancy until more is known about how to prevent prenatal and perinatal transmission of HIV infection;~~

~~(x) Sexual negotiation skills can be learned to enhance risk reduction; and~~

~~(xi) Other sexually transmitted diseases, especially those causing genital ulcers, may increase the risk of acquiring or transmitting HIV infection.~~

~~(f) Make those counseled aware HIV retesting at a later date may be necessary or recommended)) and unique circumstances, and as appropriate;~~

(a) Base counseling on the recommendations of the Federal Centers for Disease Control and Prevention as published in the Revised Guidelines for HIV Counseling, November 2001; and

(b) Assist the individual to set a realistic behavior-change goal and establish strategies for reducing their risk of acquiring or transmitting HIV; and

(c) Provide appropriate risk reduction skills-building opportunities to support the behavior change goal; and

(d) Provide or refer for other appropriate prevention, support or medical services, including those services for other bloodborne pathogens.

~~((4))~~ (2) Health care providers and other persons providing post-test counseling shall:

(a) ((Follow)) For all individuals tested for HIV, offer at least one individual counseling session at the time HIV test results are disclosed consistent with the requirements in subsection (1) of this section; and

~~(b) ((Provide at least one individual counseling session at the time HIV test results are disclosed for individuals:~~

~~(i) Testing positive for HIV; or~~

~~(ii) Reporting practice of behaviors listed in (3)(b)(i), (ii), and (iii) of this section.~~

~~(e)) If the individual being counseled tested positive for HIV infection:~~

(i) Provide or arrange for at least one individual in-person counseling session consistent with the requirements in subsection (1) of this section;

(ii) Unless testing was anonymous, ((remind)) inform the individual that the identity of the individual testing positive for HIV infection will be confidentially reported to the state or local health officer;

~~((ii) Provide assistance to persons in notifying partners, including spouses, and confirm those partners including spouses~~

~~have been notified; and/or))~~

~~((iii)) ((Seek agreement to refer the name of the individual to the local health officer for assistance in notifying partners; and/or))~~ Ensure compliance with the partner notification provisions contained in WAC 246-100-072, and inform the tested person of those requirements;

~~((iv)) ((Offer to refer partners for counseling and testing; and~~

~~((v)))~~ Develop or adopt a system to avoid documenting the names of referred partners in the permanent record of the individual being counseled; and

~~((~~vi~~)))~~ ((v)) Offer referral for alcohol and drug and mental health counseling, including suicide prevention, if appropriate; and

~~((~~vii~~)))~~ ((vi)) Provide or refer for medical evaluation
~~((and))~~ including services for other bloodborne pathogens, antiretroviral treatment, HIV prevention and other support services; and

~~((~~viii~~)))~~ ((vii)) Provide or refer for tuberculosis screening.